

Notice of Allowability

Application No.

10/039,873

Examiner

Aaron Roane

Applicant(s)

BERUBE ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/9/2004.
2. ☒ The allowed claim(s) is/are 53-61.
3. ☒ The drawings filed on 21 October 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 200408021.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Albert C. Smith (Reg. No. 20,355) on 8/2/2004.

The application has been amended as follows:

Cancel claims 1, 5, 9, 12, 29, 31, 40-43, 46, 48, 50, and 52

Add new claims 53-61 written as follows:

53 (New) A method of ablating tissue with an ablation apparatus including an elongated member having a longitudinal axis extending between a proximal end and a configurable distal portion that includes an ablation element disposed to emit ablative energy, the method comprising the steps ~~for~~ of:

advancing the distal portion into a patient's body toward a target tissue site;

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configuring the distal portion in a selected shape that is skewed relative to the longitudinal axis;

deflecting the elongated member intermediate the proximal end and the configured distal portion to position the configured distal portion toward the target tissue site;

advancing the configured distal portion to contact the target tissue;

additionally deflecting the elongated member intermediate the proximal end and the configured distal portion to move the configured distal portion along an extended path at the target tissue site; and

applying ablative energy to the ablative element during the additional deflecting to ablate tissue along the extended path.

54 (New) The method according to claim 53 wherein configuring the distal portion includes forming the distal portion into a curvilinear selected shape lying in a plane.

55 (New) The method according to claim 54 wherein deflecting the elongated member occurs substantially within said plane.

56 (New) The method according to claim 55 wherein the additional deflecting occurs substantially within said plane.

57 (New) The method according to claim 54 wherein the curvilinear selected shape is a portion of a substantially circular configuration.

58 (New) The method according to claim 57 wherein the portion of the substantially circular configuration has a radius in the range between about 0.5 cm and about 5 cm.

59 (New) The method according to claim 55 wherein the curvilinear selected shape extends along one rotational direction within the plane and the deflecting of the elongated member extends along the longitudinal axis in an opposite rotational direction substantially within said plane to position the curvilinear distal portion for contacting tissue at the target site.

60 (New) The method according to claim 59 in which the ablative element emits ablative energy along a convex peripheral portion of the curvilinear selected shape substantially aligned with the plane.

61 (New) The method according to claim 53 wherein the additional deflecting occurs substantially simultaneously with applying ablative energy for forming a substantially continuous extended path of ablated tissue.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

The prior art does not disclose, imply, suggest and/or teach or provide a properly motivated combination thereof disclosing a method of ablating tissue in an extend path longer than the normal ablative pattern of the ablative element by moving the ablative portion of the device by actuating the deflecting means.

It should be noted that these claims are closely related to the claims of Application 10/039,872. However, the claims differ in that the present method calls for the deflection of the distal portion by deliberate operator deflection of the distal portion while the method of Application 10/039,872 calls for the deflection of the distal portion in response to contact with the target tissue.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (703) 305-7377. The examiner can normally be reached on 9am - 5pm, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.R. *A.R.*
August 9, 2004

Michael Peffley
MICHAEL PEFFLEY
PRIMARY EXAMINER